

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

B
A/s

74-2278

To be argued by
ALAN R. KAUFMAN

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2278

UNITED STATES OF AMERICA,

Appellee,

—v.—

JOSE RAMIREZ-RAMOS,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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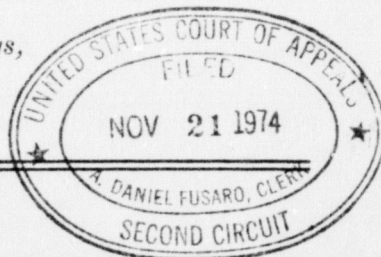


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UNITED STATES OF AMERICA,

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—v.—

JOSE RAMIREZ-RAMOS,

Defendant-Appellant.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Jose Ramirez-Ramos appeals from a judgment of conviction entered in the United States District Court for the Southern District of New York on September 23, 1974, after a two day trial before the Honorable Charles M. Metzner, United States District Judge, and a jury.

Indictment 74 Cr. 18, filed January 9, 1974, charged Ramirez and twenty-one others in seventeen counts with various violations of the federal narcotics laws.* Ramirez was charged in Count One, together with the other twenty-one defendants and two unindicted co-conspirators, with conspiracy to traffic in narcotics and in Count Fifteen with receiving, concealing, buying, and facilitating the trans-

* Indictment 74 Cr. 18 superseded Indictment 73 Cr. 950, filed October 10, 1973.

portation, concealment and sale of one-half kilogram of heroin in March or April, 1970. Title 21, United States Code, Sections 173 and 174.

Trial commenced on July 25, 1974, and ended on July 26, 1974, when the jury convicted Ramirez on Count One and acquitted him on Count Fifteen.*

On September 23, 1974, Judge Metzner sentenced Ramirez to five years imprisonment.

Ramirez is currently serving his sentence.

Statement of Facts

The Government's Case

In March, 1970, co-defendant Raul Ortega-Alvarez brought approximately 45 kilograms of heroin into the New York area for distribution and sale. Miguel Rodriguez, a co-conspirator, was recruited to help in the distribution by finding customers for the heroin. Rodriguez succeeded in selling approximately 20 kilograms of the heroin to approximately 14 different customers, during March, April and May, 1970 (Tr. 18-21).**

One of the customers to whom Rodriguez sold was the appellant, Jose Ramirez-Ramos (Ramirez). In March, 1970, Ramirez approached Rodriguez and asked to buy heroin which Ramirez said he knew Rodriguez was distributing. Ramirez told Rodriguez that he was buying Rodriguez's heroin from co-defendants Luis Reyes and

* Thirteen of Ramirez's co-defendants went to trial on February 20, 1974, and eight of them were convicted on March 21, 1974. Those convictions were recently affirmed in *United States v. Ortega-Alvarez*, Docket No. 74-1388 (2d Cir., November 8, 1974). Ramirez had not been apprehended in time for that trial.

** "Tr." refers to the trial transcript.

Jorge Infiesta but that they diluted the heroin too much and that Ramirez wanted to buy the heroin directly from Rodriguez. Rodriguez agreed and quoted a price of \$20,000 per kilogram. Ramirez said that he was interested in one-half kilogram, and he agreed to a \$10,000 purchase price (Tr. 27-30).

The next day, Ramirez met Rodriguez at El Bayames Restaurant at 174th Street and Amsterdam Avenue. Both went into the men's room, and there Rodriguez delivered a half kilogram of heroin to Ramirez (Tr. 30-32).^{*} Approximately two days later, Ramirez and Rodriguez met at the 005 Bar. At that time, Ramirez gave Rodriguez \$5,000 in \$20 bills in partial payment for the half kilogram. A few days later, again at the 005 Bar, Ramirez paid the remaining \$5,000 due. At this time, Ramirez told Rodriguez that he needed another half kilogram. Rodriguez said that he suspected that he was being followed by federal agents, but that when the opportunity was right, he would deliver a second half kilogram to Ramirez (Tr. 35-37).

A short while later, Rodriguez brought 6½ kilograms of heroin from Elizabeth, New Jersey, where it was being stored, to the house of co-defendant Joaquin Prada. Later that same day, Ramirez and Rodriguez met at the 005 Bar, and Rodriguez told Ramirez that he could make the delivery of the half kilogram that night at the Cuba Bar. Ramirez said that the Cuba Bar was a good location, since it was just a block or so away from where he hid his heroin. Ramirez and Rodriguez met at the Cuba Bar at 11:00 that night, and Rodriguez gave the half kilogram to Ramirez in the men's room of the bar (Tr. 37-40).

About two days later, at the 005 Bar, Ramirez met Rodriguez and told him that the heroin was pure and that

^{*} This transaction was the basis of the substantive count against Ramirez.

there was no difficulty in selling it (Tr. 40). On three occasions thereafter, at the 005 Bar, Ramirez paid Rodriguez for the second half kilogram in installments of \$5,000, \$3,000 and \$2,000. On the second occasion co-defendant Cirillo Figueroa, in Ramirez's presence, paid Rodriguez \$11,000 as part payment for heroin he had previously received. On the last occasion, Ramirez asked for more heroin and was told by Rodriguez that the entire shipment had been sold, but that when the next shipment arrived, he would be notified (Tr. 40-42).

The Defendant's Case

Ramirez testified in his own behalf, and admitted a prior conviction for the unlawful possession of a firearm. He admitted knowing Miguel Rodriguez, admitted frequenting the 005 Bar, the Cuba Bar, and El Bayames Restaurant, and admitted meeting Rodriguez in these places. Ramirez denied ever buying heroin from Rodriguez or ever paying him \$5,000 or \$10,000 (Tr. 79-81).

ARGUMENT

The evidence was sufficient to convict the defendant on the charge of conspiracy.

The sole issue raised in this appeal is whether there was sufficient evidence to demonstrate that Ramirez participated in the conspiracy. Ramirez claims that since the jury acquitted him on the substantive charge, they must have decided that the first half-kilogram purchase did not occur, and therefore the purchase of the second half-kilogram was an isolated transaction, insufficient to show Ramirez's participation in the overall conspiracy. This claim is without merit.

The "single act" or "isolated transaction" rule, is set forth in *United States v. De Noia*, 451 F.2d 979, 981 (2d Cir. 1971):

"For a single act to be sufficient to draw an actor within the ambit of a conspiracy to violate the federal narcotic laws, there must be independent evidence tending to prove that the defendant in question had some knowledge of the broader conspiracy, or the single act itself must be one from which such knowledge may be inferred."

Here there was far more than a single act or isolated transaction. First, the evidence established that on two occasions in a reasonably brief period Ramirez purchased half kilo quantities of heroin from Rodriguez for \$10,000.* While these two substantial purchases are sufficient of themselves to permit an inference that Ramirez had knowledge of the broad conspiracy charged, *United States v. Ortega-Alvarez*, *supra*, slip op. at 347, there was other evidence establishing that Ramirez had substantial knowledge of the scope of the conspiracy. The testimony showed that Ramirez approached Rodriguez and asked to buy heroin which Ramirez said he knew that Rodriguez was distributing. Moreover, Ramirez told Rodriguez that he had previously purchased heroin from Luis Reyes and Jorge Infiesta, two other members of the conspiracy, and that he knew that Reyes and Infiesta had purchased that

* Ramirez' argument that his acquittal on the substantive count precludes consideration of his first heroin purchase as part of the evidence supporting his conviction on the conspiracy count is contrary to the settled law in this Circuit. *United States v. Sisca*, Dkt. No. 73-2017 (2d Cir., May 10, 1974) slip op. at 3426 n.9, *cert. denied*, 43 U.S.L.W. 3281 (November 11, 1974); *United States v. Handel*, 464 F.2d 679, 681 (2d Cir.), *cert. denied*, 409 U.S. 984 (1972). See also *United States v. Zane*, 495 F.2d 683, 689-692 (2d Cir.), *cert. denied*, 43 U.S.L.W. 3239 (October 21, 1974).

heroin from Rodriguez. He had sought out Rodriguez because, he said, Reyes and Infiesta* were cutting the heroin too much and he now wanted to buy directly from Rodriguez. Furthermore, Rodriguez's response to Ramirez that heroin was available at \$20,000 per kilogram established that Rodriguez had substantial quantities of heroin for sale and can only have confirmed, as Ramirez already knew, that Rodriguez was a major distributor with numerous customers. In addition, when Ramirez made his second payment to Rodriguez for the second half kilo, he saw Cirillo Figueroa, another co-conspirator, pay Rodriguez \$11,000 for narcotics Rodriguez had sold Figueroa. Finally, when Ramirez made his last payment to Rodriguez for the second half-kilo, he sought to purchase further heroin and was promised more from the next shipment. Plainly, Ramirez had more than "... some knowledge of the broader conspiracy . . .", *United States v. De Noia, supra*, 451 F.2d at 981, and fully intended to participate in that conspiracy. *United States v. Aviles*, 274 F.2d 179, 189 (2d Cir.), *cert. denied as Genovese v. United States*, 362 U.S. 974 (1960).

* Infiesta and Figueroa were convicted in the trial before Judge Metzner in February and March, 1974, and their convictions affirmed by this Court in *United States v. Ortega-Alvarez, supra*. Reyes is a fugitive.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ALAN R. KAUFMAN being duly sworn,
deposes and says that he is employed in the office of the
United States Attorney for the Southern District of New York

That on the 21st day of November, 1974
he served ^{2 copies} ~~a copy~~ of the within brief
by placing the same in a properly postpaid franked envelope
addressed:

JOHN CORBETT
66 COURT STREET
BROOKLYN, N. Y. 11201

And deponent further says that he sealed the said envelope
and placed the same in the mail box ~~drop~~ for mailing
outside the United States Courthouse, Foley Square,
Borough of Manhattan, City of New York.

Alan R. Kaufman

Sworn to before me this

21st day of November, 1974

Ralph L. Lee

RALPH L. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1975

